

From: [HARDIMAN,Leo](#)
To: [FALK,Angelene](#)
Cc: [AGO,Rocelle](#)
Subject: Proposed change to FOI Branch structure
Date: Tuesday, 1 November 2022 10:57:00 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Angelene,

As you know, I have been giving considerable thought to ways in which we might improve FOI Branch outcomes. Based on that consideration, I think there is a relatively urgent need to re-focus and restructure the Branch. The funds available to the Branch also need consideration. Rocelle is discussing the current budget position with s 22(1) this week and I will come back to you on funding once that has occurred.

At the moment, putting aside resourcing constraints, there are in my view two significant constraints on the Branch's outcomes in relation to core statutory functions, particularly those relating to IC reviews. These are:

1. A significant diversion of focus.
2. A mismatch between structure and process, causing a fundamental 'queue' delay which cannot be resolved efficiently with the Branch's current structure.

(1) Diversion of resources

The Branch performs a large number of tasks which take its focus away from core functions and the IC review function in particular. Many of these tasks are being undertaken by the S&S team which is unsustainable given the small size of that team and its intended IC review decisions focus. There is a need to remove some of these tasks from the S&S team, and some of the tasks from the Branch altogether, given the current very significant resourcing constraints of the Branch. Under a proposed new structure, a range of more important tasks would be allocated to an EL 2 separated from the Branch teams. That EL 2 would be supported by one other officer at APS 6 or EL 1 level, on rotation if the Branch's resources allowed.

The Branch Head's focus is also currently spread far too wide, particularly in relation to clearance tasks. The proposed structure would seek to address this where possible taking into account staff experience levels. Rocelle and I are also looking at her meetings burden which is currently too heavy in my view. Rocelle is also to devolve a number of administrative, coordination and operational tasks to the EO (some of this devolution is also aimed at enabling Directors to focus on the core aspects of their work).

(2) Structure and processes

The fundamental issue with the current structure is that the IC review process, beyond intake and early resolution, is left to the two teams currently required to draft decisions. Even if all of the current backlog was at what is currently referred to as the 'ready to draft' stage (noting

much of it is not), for a significant proportion of matters further IC review steps are required. Because we are largely required for administrative law purposes to adopt a FIFO approach to decisions, under the current structure and process very many of the matters which either are, or will going forward, be ready to draft (ie, which do not require further IC review steps) cannot progress because matters earlier in time are not being actively case managed. Rather, those more complex matters become stuck in a queue together with those that are actually ready to draft. While the management of those more complex matters remains effectively halted in the queue it seems difficult to justify elevation of ready to draft matters without disclosing, in effect, a disorderly elevation of some matters over others. The 'quarterly review' process does not adequately address this problem. This barrier would be removed if there was a program of active case management for all matters of a similar age – it would then be rational for every matter going through case management to proceed to decision as soon as all relevant case management steps have been taken.

More broadly, the current structure is problematic because the same people are engaged in both IC review and drafting tasks. With what is, in reality, a very small number of people in the relevant teams, there is a division of focus which reduces efficiency and outcomes. By way of example, under the quarterly review process a team member is required to touch a matter every time an applicant enquires about progress. The content of the review requires the team member to read into the matter and take the next step necessary in the IC review. One team member currently has 20 such matters. A significant amount of time is required to get across the matters and to determine and take the next relevant step. The matters are then left for another quarter (ie until a further query or a quarter passes, whichever occurs first). The team member is largely distracted from decision writing while trying to manage the quarterly review matters. There is a significant randomness to the division of focus. It is essentially impossible to set realistic output targets for team members to accept and aim to produce because you cannot say in advance how much of an individual's time should and will be spent on one task over another.

There is a clear need in my view to separate the IC review and decision drafting/making processes to resolve these issues. To that end, following consultation with staff, I propose to move to a new Branch structure from 1 February 2023, broadly as follows:

- Intake and early intervention/compliance - comprising 7 to 8 team FTE equivalent members and conducting the intake and early res functions but including EoT applications and investigations declines. (Transfer of EoT decisions and declines to I&ER has been under discussion since the beginning of the year and discussed at Director level. EoT decisions will transfer ahead of any structure change.)
- Reviews and investigations – comprising 7 FTE equivalent team members responsible for: case managing matters which are not otherwise ready to draft to resolution or drafting stage, progressing complaints to s 86 notices/acquittal. This team would also draft basic decisions (ie, where we could effectively template a decision type – simple charges, searches, practical refusals matters).
- Decisions – comprising 5 to 6 FTE equivalent team members responsible for: drafting IC review decisions and monitoring implementation, drafting vexatious applicant declarations.

Monitoring, guidance and engagement – one EL 2 and possibly one EL1 or APS 6 depending on team resources, responsible for FOI stats/annual report content, Guidelines changes, national and international conferences, speech requests, estimates processes, external communications. I understand this separation of function model existed, and worked well, previously.

While targets are difficult to determine precisely absent practical experience of a changed structure, Rocelle and I have determined the following as realistic, albeit in some cases stretched, targets:

- Intake and early intervention/compliance: approx. 1,200 IC review matters finalised per year, plus as near as possible all EoTs and investigations declines.
- Reviews and investigations: approximately 60 IC review matters per officer (with a lower flexible load for the Director) taken to resolution or drafting stage, plus simple decisions as they arise, plus 20 s 86 notices this year, increasing to 40 in 2023/24 (noting again that investigations declines will be made at the intake and early intervention stage).
- Decisions: approximately 1 decision per week per team member (with a lower flexible load for the Director), accounting for differing complexity.

Applying those targets, we could expect to case manage around 390 IC review matters to completion or drafting each year and draft around 240 decisions per year. The decisions target proceeds on the assumption that the proposed delegation amendments will be enacted, allowing the Branch Head to make simpler decisions, particularly those coming out of the Reviews and Investigations team. This would be a significant improvement on current outcomes if achieved but would still see our backlog growing if current demand continues (and even if there is a reduction in the Home Affairs related workload, which is largely focussed at the intake stage).

With an addition 3 staff at EL 1 level, applying these targets, we could achieve around:

- 500 cases managed to completion or drafting each year
- Approaching 300 decisions a year.

That would significantly reduce growth in our backlog if achieved. The question is whether the agency could find funding for those staff (ie, from department funds/staffing rearrangements) in the absence of a specific FOI funding increase.

There are clearly risks associated with the proposed change. While I understand most of the more senior officers consulted to date are clearly in favour of the change, it will no doubt be difficult for some staff. The main risk we face is retaining our good staff and finding and retaining appropriate new staff, running at our maximum budgeted level. Relatedly, the teams are so small that fatigue for some staff members is likely to be an ongoing issue and a barrier to retention. Separation of the IC review and decision drafting/making tasks might also be thought to increase duplication. However, having reflected on this, I think an increase in duplication is unlikely. I am informed that the separation existed pre-disbandment and duplication of effort

was not a significant issue. In any case, the current structure involves a very large amount of duplication due to the turnover of staff in the reviews/drafting teams; that duplication is unlikely to increase by separating the review and decision tasks.

A February start will allow us to on-board some new staff sufficiently and to develop a proper revised work plan. We will need to determine what a change before the end of February would mean for the *Patrick* proceedings, especially Rocelle's evidence.

I will separately send to you a list of tasks (beyond IC review and complaints functions) currently undertaken by the Branch, and also a list of Rocelle's tasks, for background information.

There are some miscellaneous issues which it would also be good to resolve. These are:

1. Availability of resources to implement a Resolve portal to allow applicants and respondents to engage with us directly via Resolve. This would increase administrative efficiencies, particularly in the intake team.
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[REDACTED]
[REDACTED] they knew what they were talking about and I think would be good to engage for this purpose if resources permit.

Grateful if we could discuss at a convenient time.

Leo.



Leo Hardiman PSM KC | Freedom of Information Commissioner
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From: [HARDIMAN,Leo](#)
To: [AGO,Rocelle](#); s22(1)
Subject: FW: Proposed change to FOI Branch structure [SEC=OFFICIAL]
Date: Tuesday, 1 November 2022 11:30:18 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Colleagues,

Please see below a note I have drafted and sent to Angelene setting out my thoughts about why a restructure of the way we do our work is needed and what that restructure could look like. For noting, and of course for discussion in our meeting tomorrow if/as you consider appropriate.

Please do not pass this on to others at this stage. We will need to discuss approach to consultation with staff once I have discussed with Angelene and considered any views she may have.

Regards,

Leo.

From: HARDIMAN,Leo
Sent: Tuesday, 1 November 2022 10:58 AM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Cc: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Subject: Proposed change to FOI Branch structure

Angelene,

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[REDACTED]
[REDACTED], they knew what they were talking about, and I think would be good to engage for this purpose if resources permit.

Grateful if we could discuss at a convenient time.

Leo.



Leo Hardiman PSM KC | Freedom of Information Commissioner

Office of the Australian Information Commissioner

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OAIC - Commissioner

From: HARDIMAN,Leo
Sent: Thursday, 2 February 2023 3:23 PM
To: OAIC - Office Aus Information Commissioner
Subject: Executive update [SEC=OFFICIAL]

Categories: FOIREQ check



Good afternoon colleagues,

s22(1)

FOI Branch restructure

The FOI Branch went live with its new structure yesterday, 1 February. The restructure is designed to facilitate an increased focus on case management in the Information Commissioner review space and

an increase in finalisation of IC review matters. The Branch leadership team has done a huge amount of work to implement the changed structure, aided by a very high level of engagement from Branch members.

FOI Branch planning

The FOI Branch will be holding its annual planning forum next Monday and Tuesday, 6 and 7 February. The Branch is looking forward to hearing some external perspective from a guest speaker and to having some focussed time to identify further improvements it can make to its processes.

s22(1)



s 22(1)

Kind regards,

Leo.



Leo Hardiman PSM KC | Freedom of Information Commissioner
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From: [HARDIMAN,Leo](#)
To: [FALK,Angelene](#)
Subject: RE: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]
Date: Monday, 20 February 2023 9:23:00 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Angelene,

As I note below, the leadership of your staff is a matter for you. I do not see any issue for me to try and 'work through' with you.

There is no need for an acknowledgement of 'receipt' of this email.

Cheers,

Leo.

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Friday, 17 February 2023 5:50 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: RE: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]

Leo I acknowledge receipt of your email, I'll come back to you next week to work through the responsiveness issue you've raised.

Regards
Angelene

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Thursday, 16 February 2023 2:23 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: FW: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]

Angelene,

While I don't find the attribution to me of 'evident frustration' useful it is, in any case, a misinterpretation. So let me put my views more directly in the hope of clarifying any misunderstanding:

- The IAGB process as designed is not in my view an efficient use of resources. It needs to be simplified having regard to what is practically required to provide you, as agency head and accountable authority, sufficient assurance that the organisation for which you are responsible is complying with its FOI obligations.
- Corporate needs to fully engage with the redesign of that process and its ongoing management.
 - The IAGB function is inherently a corporate function.
 - Given the state of the FOI regulatory function and the resources allocated to it,

there is simply no capacity for FOI Branch resources to be distracted by management of a corporate compliance function. That is obvious, and must have been so for a very long time.

- I do not have any control over the corporate functions of the OAIC. Nor am I an employee working for you. It is not appropriate that the FOI Commissioner's time be spent dealing with management of a corporate compliance assurance activity. It is perhaps appropriate that the FOI Commissioner be engaged in consideration of the outcomes of that activity through Exec's consideration of IAGB outcomes. I am happy to be engaged in that way should you find it helpful in managing your assurance process.

Whatever the original intention, I appreciate your understanding, now expressed, that the activity is appropriately dealt with separately from the FOI function.

Would I find it helpful if a number of your employees were more responsive to me in my role as FOI Commissioner? Indeed, I would. That is, of course, a matter of leadership for you as agency head.

Regards,

Leo.

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Wednesday, 15 February 2023 7:53 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: RE: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]

Leo I agree this can move from you and the FOI Branch.

Your engagement was I think a well intended proposal to provide you with cross office engagement on an area of expertise as you joined the OAIC.

But I appreciate the matters you have raised and will have a change actioned.

There are other requirements relating to information governance that may usefully be included in the IAGB, and so the shift makes sense on a number of fronts.

I'm sorry its caused evident frustration.

Regards
Angelene

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Wednesday, 15 February 2023 7:04 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: FW: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]

Angelene,

I haven't received any response to my email immediately below (which is par for the course). I think perhaps Annamie should discuss with you what it is that, by way of a single and relatively simple report, the IAGB should consider and subsequently provide to Exec re assurance of compliance with organisational FOI obligations. I had been very clear with Legal that what I wanted to settle was a template report which would serve both the IAGB's purposes and Exec's purposes, preferably with a lot less distraction of resources than the IAGB as organised to date has required. After months and months, this is what results.

More broadly, while the concept of the IAGB may have been put forward by Rocelle, I am not sure why my time as Commissioner, or time of the FOI Branch, is being taken up with this. The FOI Branch could perhaps usefully contribute technical input to the IAGB process where, on occasion, that is needed. In my view, it is clear that the function is otherwise a corporate function. It should not be yet another thing distracting the very limited resources of the FOI Branch from the enormous core statutory function task before it. To the extent I have input to the compliance oversight, it should be through Exec.

Regards,

Leo.

s22(1)

From: [FALK,Angelene](#)
To: [HARDIMAN,Leo](#); [OAIC - Executive Assistant](#)
Cc: [s22\(1\)](#); [AGO,Rocelle](#)
Subject: Re: Secretary AGD / OAIC - 1/23 [SEC=OFFICIAL]
Date: Wednesday, 22 February 2023 7:57:26 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Thanks Leo

I can't get onto the system so sending this from my phone. I would appreciate seeing the list prior if you or Rocelle can please forward. As you say indicating they will be provided to Celeste may be more appropriate.

[s22\(1\)](#) please provide the areas of discussion to [s22\(1\)](#) as follows

FOI resources and personnel
AAT and fees
Law reform: minor amendments to the FOI Act
Commonwealth FOI culture and leadership

Thank you
Angelene

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Tuesday, February 21, 2023 6:38 pm
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; OAIC - Executive Assistant <executiveassistant@oaic.gov.au>
Cc: [s22\(1\)](#); [AGO,Rocelle](#) <Rocelle.Ago@oaic.gov.au>
Subject: RE: Secretary AGD / OAIC - 1/23 [SEC=OFFICIAL]

Angelene,

I have the technical amendments details, and can bring them along or can indicate we'll provide them to Celeste, which might be more appropriate as there's not much for [s22\(1\)](#) to engage with there.

I'd like to say something about Commonwealth culture and leadership in the FOI context.

Leo.

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Tuesday, 21 February 2023 4:59 PM
To: OAIC - Executive Assistant <executiveassistant@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Cc: [s22\(1\)](#)
Subject: RE: Secretary AGD / OAIC - 1/23 [SEC=OFFICIAL]

Leo based on our previous discussion regarding this meeting I was proposing the following areas:

- FOI resources and personnel
- AAT referrals and fees
- Law reform: minor amendments to the FOI Act

Rocelle indicated there were some minor amendments that could be considered and that she would send through some points which I haven't yet received. It may be that we can raise at a high level that we are interested in whether there may be a legislative vehicle if there are minor amendments identified for efficiency purposes.

If you have any suggestions or additions please let me know. I'd like s22(1) to be able to send a response across asap.

Regards
Angelene

From: OAIC - Executive Assistant <executiveassistant@oaic.gov.au>
Sent: Tuesday, 21 February 2023 2:53 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Cc: s22(1)
Subject: Secretary AGD / OAIC - 1/23 [SEC=OFFICIAL]

Afternoon Commissioners,

Confirmed with s22(1) (EA), in preparation for the above meeting on Thursday @ 3.30pm, the Secretary welcomes any areas of discussion to be forwarded beforehand.

Regards,

s 22(1)



s22(1) | Executive Assistant to Angelene Falk
Australian Information Commissioner and Privacy Commissioner
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GPO Box 5288 Sydney NSW 2001 | oaic.gov.au
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From: [FALK,Angelene](#)
To: [AGO,Rocelle](#); [HARDIMAN,Leo](#)
Subject: RE: Potential legislative amendments [SEC=OFFICIAL]
Date: Wednesday, 22 February 2023 3:27:00 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Thank you Leo and Rocelle

From: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Sent: Wednesday, 22 February 2023 9:22 AM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: RE: Potential legislative amendments [SEC=OFFICIAL]

Good morning

Please see updated table below:

FOI Act Amendments
s47C(1)

Kind regards



Rocelle Ago | Assistant Commissioner
Freedom of information
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+612 9942 4205 | rocelle.ago@oaic.gov.au

From: HARDIMAN, Leo <Leo.Hardiman@oaic.gov.au>
Sent: Wednesday, 22 February 2023 9:19 AM
To: FALK, Angelene <Angelene.Falk@oaic.gov.au>
Cc: AGO, Rocelle <Rocelle.Ago@oaic.gov.au>
Subject: FW: Potential legislative amendments [SEC=OFFICIAL]

Angelene,

These are the technical amendments. They are all minor **s47C(1)**

Rocelle – would you mind resending to both Angelene and me with those two very minor changes if you agree? Thanks

Leo

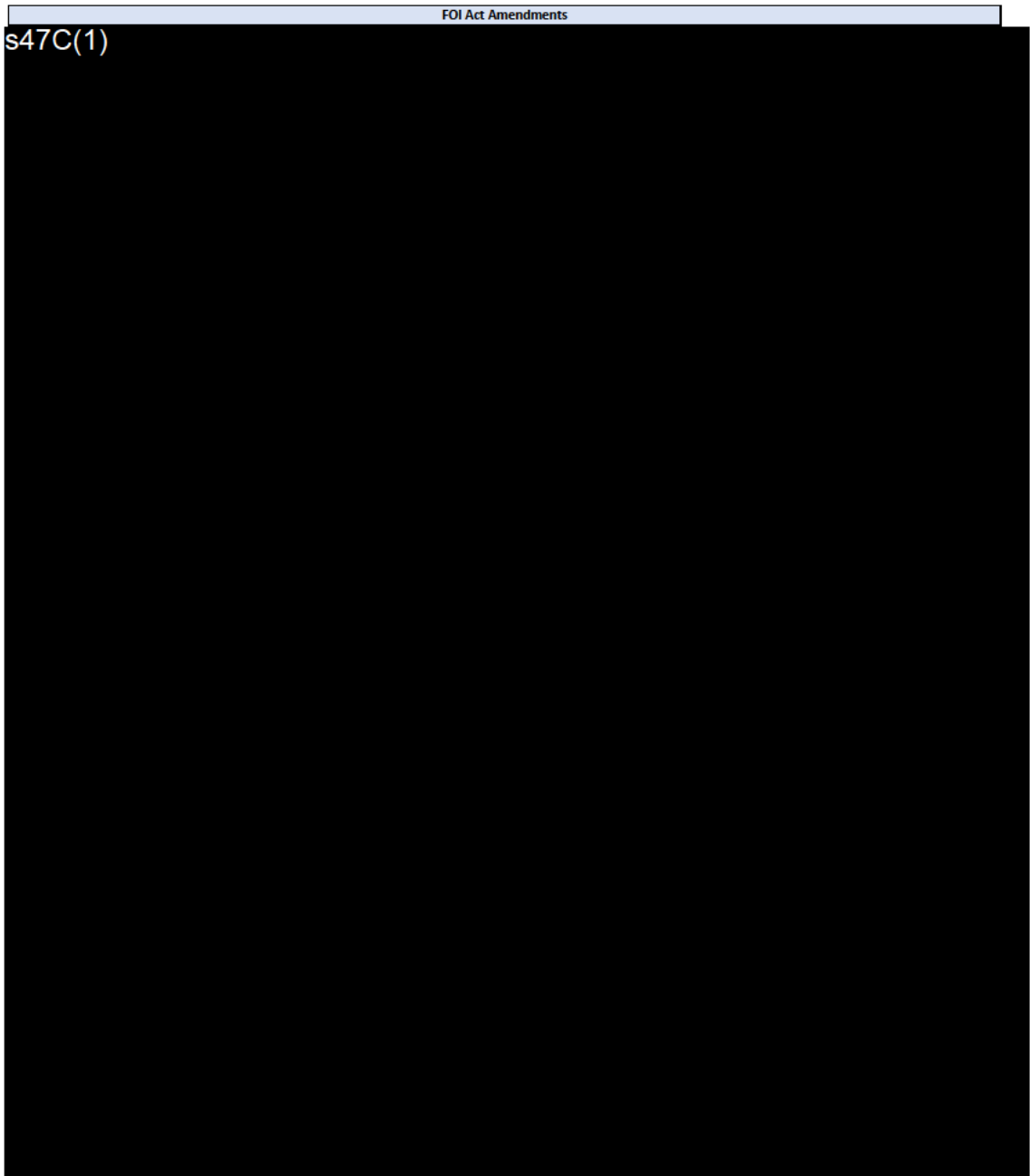
From: AGO, Rocelle <Rocelle.Ago@oaic.gov.au>
Sent: Monday, 20 February 2023 12:45 PM
To: HARDIMAN, Leo <Leo.Hardiman@oaic.gov.au>
Subject: Potential legislative amendments [SEC=OFFICIAL]

Hi Leo

As discussed, following the Executive Committee meeting, I had undertaken to provide a list of legislative amendments that may improve IC review procedures/processes

Please see the proposed amendments to the *Freedom of Information Act 1982* below:

FOI Act Amendments
s47C(1)



s47C(1)

s47C(1)

Kind regards



Rocelle Ago | Assistant Commissioner
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OAIC - Commissioner

From: HARDIMAN,Leo
Sent: Monday, 6 February 2023 4:30 PM
To: FALK,Angelene; HAMPTON,Elizabeth; AGO,Rocelle
Subject: RE: FOI report [SEC=OFFICIAL]

Categories: FOIREQ check

Thanks Angelene. No comments on the green text from me. On Libby's query, we should retain the numbers for the period rather than include current numbers.

Cheers,

Leo.

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Monday, 6 February 2023 4:19 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

Thanks colleagues,

Rocelle and Leo can you please review the text in green below and advise your view on the question from Libby in yellow highlight.

Much appreciated

Angelene

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Monday, 6 February 2023 9:50 AM
To: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

Thanks Libby,

Answers 1 to 3 are fine with me. I think Angelene wanted to clear the last answer.

Kind regards,

Leo.

From: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
Sent: Monday, 6 February 2023 9:43 AM
To: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

Thanks very much Rocelle

Commissioners – in light of Rocelle’s comments below, I proposed to send the following response to the Attorney-General’s office. I would be grateful for your clearance.

Regards

Libby

START

Dear **s 22(1)**

I have responded to your questions in blue below. Please let me know if further information is required.

Regards

Libby

Dear Libby

Thank you very much for this report.

Would be very grateful to receive regular quarterly reports.

Would it also be possible to receive an indication of how many IC reviews have been internally reviewed prior to coming to the OAIC compared with first instance and the open matters more than 12 months old and also those received in the relevant quarter?

Section 54L of the Freedom of Information Act provides that an IC review can be lodged in relation to an access refusal decision (that is, an original decision that satisfies that definition) or an internal review of an access refusal decision. Similar provisions apply to access grant decisions (s 54M). Division 5 of Part VII of the FOI Act provides some discretion to the Commissioner not to undertake an IC review, however the Commissioner does not have the discretion to decline to undertake an IC review merely because the decision has not been internally reviewed. The OAIC encourages applicants to seek internal review prior to IC review (see FOI Guidelines, 9.3 – 9.5) on the basis that internal review can be quicker and enables the agency to take a fresh look at its decision.

Of the 2032 IC reviews currently on hand, 589 (29%) are for IC review of internal review decisions and 21 (1%) are for IC review of deemed internal review decisions. This means that in 70% of the IC reviews on hand the applicants have not sought internal review.

It would also be useful to receive an indication of how many deemed IC reviews relate to matters at first instance or following an application for internal review.

Also, just to clarify:

- in terms of the ‘manner of finalisation’ table on the second page, I assume that these relate to all IC matters (ie including some that are older than 12 months) rather than just those received during since 19/11/22. That is, of the 270 matters finalised since 19/11/22, there were 7 decisions. Is this a correct understanding?

That is correct – there were 270 matters finalised between 19/11/22 and 19/1/23 (consisting both of matters received more than 12 months ago and less than 12 months ago) and 7 decisions.

- in terms of the deemed IC reviews, is it the case that since 19/11/22 there have been a total of 179 deemed IC reviews with 162 finalised and a total of 165 deemed IC reviews for Home Affairs with 139 finalised?

We received 96 deemed decisions for IC review between 19/11/22 and 19/1/23. Of those 96 new matters, 89 related to Home Affairs.

At the end of that period, we had 83 deemed IC reviews left to resolve. We finalised 162 IC reviews of deemed decisions in the period. Of those finalised in the period, 139 related to Home Affairs.

(Commissioners and Rocelle: Rocelle has advised that we currently (as at 3 February) have 173 matters on hand, of which 117 matters relate to the Department of Home Affairs. If the text above is accurate, I wonder whether we should retain that text rather than provide additional data outside the reporting period? We will be required to produce another report as at 31 March which will pick up our February deemed workload.)

- the third page appears to indicate that 20% of IC reviews received in 2019 are yet to be allocated and the intention is for there to be full allocation of 2019 matters by 31 March 2023. Is this a correct understanding? If so, grateful for further clarification as to why these matters have not already been allocated.

The following factors have impacted on the allocation of IC reviews:

- the significant year on year increases in applications for IC review, without commensurate resources
- the need to focus on other FOI regulatory priorities within the resources allocated to FOI, including a focus on early resolution of incoming applications, an increase of extension of time applications during the start of the pandemic—pandemic related increases to extension of time applications, resolving older complaints to improve agency practice and progressing cohorts of IC review applications including through precedential decisions for administrative efficiency.
- significant staff attrition within the FOI Branch and the need to continually recruit and train new staff and reallocate cases
- the impact of the pandemic on an agency’s ability to respond to requests for submissions.

Many thanks
s 22(1)

END



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From: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Sent: Friday, 3 February 2023 6:07 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

Good afternoon

Regarding the proposed answer to the first question

- We do collect that data (we track whether it is the initial decision, deemed initial, internal or deemed internal review, we just don’t report on it specifically).
- On a preliminary count - of the 2032 matters we have on hand, 589 (29%) applications are for review of internal review decisions and 21 applications are review of deemed internal review decisions (1%). This essentially means that in 70% of IC reviews on hand, the applicants have not sought internal review.
- If we need more granular reporting, for example, number received during a particular time period, I will BARD’s assistance.

Regarding the proposed answer to the third question – we currently have 173 matters undergoing the deemed access refusal process, with 117 matters with Home Affairs as the Respondent.

Regarding the fourth question – I had a preliminary discussion with Angelene on Wednesday regarding the factors that have impacted on the timely finalisation of aged/legacy reviews:

- The significant year on year increases in applications for IC review, without commensurate resources
- The need to focus on other FOI regulatory priorities within the resources allocated to FOI, including an increase of extension of time applications during the start of the pandemic
- Significant staff attrition within the FOI Branch and the need to continually recruit and train new staff and reallocate cases
- The impact of the pandemic on an agency’s ability to respond to requests for submissions.

Kind regards



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From: HAMPTON,Elizabeth

Sent: Tuesday, 31 January 2023 12:12 PM

To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>

Subject: FW: FOI report [SEC=OFFICIAL]

Good afternoon Commissioners

As mentioned yesterday, the Attorney-General’s office had further questions arising from the FOI report sent across last week. A copy of that report is attached.

I have drafted responses to the particular questions below, in blue. s 22(1) has confirmed those explanations are correct from BARD’s perspective.

I’d like to validate the first point in particular with Rocelle, who knows the details of the system really well. In addition, I’d be grateful for some text regarding the last dot point.

As always, happy to discuss.

Regards

Libby



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From: S 22(1) [redacted]@ag.gov.au>
Sent: Monday, 30 January 2023 10:56 AM
To: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

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OFFICIAL

Dear Libby

Thank you very much for this report.

Would be very grateful to receive regular quarterly reports.

Would it also be possible to receive an indication of how many IC reviews have been internally reviewed prior to coming to the OAIC compared with first instance and the open matters more than 12 months old and also those received in the relevant quarter?

The OAIC does not collect data regarding whether an internal review has occurred prior to the lodgement of an IC review. Section 54L of the Freedom of Information Act provides that an IC review can be lodged in relation to an access refusal decision (that is, an original decision that satisfies that definition) or an internal review of an access refusal decision. Similar provisions apply to access grant decisions (s 54M). Division 5 of Part VII of the FOI Act provides some discretion to the Commissioner not to undertake an IC review, however the Commissioner does not have the discretion to decline to undertake an IC review merely because the decision has not been internally reviewed. The OAIC encourages applicants to seek internal review prior to IC review (see FOI Guidelines, 9.3 – 9.5) on the basis that internal review can be quicker and enables the agency to take a fresh look at its decision.

It would also be useful to receive an indication of how many deemed IC reviews relate to matters at first instance or following an application for internal review.

Also, just to clarify:

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- the third page appears to indicate that 20% of IC reviews received in 2019 are yet to be allocated and the intention is for there to be full allocation of 2019 matters by 31 March 2023. Is this a correct

understanding? If so, grateful for further clarification as to why these matters have not already been allocated.

Grateful for text to include here

Many thanks

S 22(1)

OFFICIAL

From: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>

Sent: Friday, 27 January 2023 1:15 PM

To: S 22(1) <[REDACTED]@ag.gov.au>

Subject: FOI report [SEC=OFFICIAL]

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Dear S 22(1)

As previously discussed, attached is the first FOI report.

If it is convenient for you, we could move this report onto a regular quarterly reporting cycle, such that the next report would provide information about the quarter from January to March this year, the next from April to June etc.

Please let me know if you need further information or would like to discuss.

Regards

Libby



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